

# CRIMINAL LAW

Professor Alexander

## Required Readings:

Read Dressler, Ch. 13  
Model Penal Code § 2.04.

## Problem Set 8

1. The defendant, a sailor from Baghdad, committed an act of sodomy while his ship was docked in London in 1836. In his own country, this act was not considered a criminal offense. He claimed that he was ignorant of the fact that sodomy was a criminal offense under English law, and the jury believed him. If English law were governed by the Model Penal Code provisions on mistake of law and the U.S. Constitution, what result?

Write a one-page memo discussing the problem.

2. Defendant, an operative of the C.I.A., is uncertain whether breaking into the office of a physician and looking through her files, which he had been asked to do for the Agency, is legal under some national security exception to normal laws against breaking and entering. His superior in the C.I.A. assures him that this is a “legal” break-in. He later comes across the U.S. Attorney General at a party, who also assures him over drinks that what the C.I.A. wants him to do is legal. Defendant then performs the break-in and is arrested by state police. In fact, the break-in was *not* legal under any national security exception, though some break-ins are. At his trial he pleads mistake of law and offers proof of the above facts. Under the Model Penal Code, is he entitled to the mistake of law defense?

Write a one-page memo.

3. Lady Eldon failed to declare her French lace at American customs. She mistakenly believed that because of the U.S.’s free trade policy, the lace was not subject to duty. It was, however, though most items are not dutiable.

The Customs offense proscribes “knowingly failing to declare any dutiable item.” How must this be construed to afford Lady Eldon a defense of mistake of law? Who should bear the burden of proving or disproving the mistake?

4. Taafe was caught smuggling marijuana, a crime. Taafe testified that he was merely an underling in the smuggling ring, and he thought what he was smuggling was currency, not marijuana. Smuggling currency is not a crime, though Taafe thought it was. If the jury believes that Taafe did not know that what he was smuggling was marijuana, but mistakenly believed that it was currency and that smuggling currency was a crime, of what should it convict Taafe and why? What would you need to know about the marijuana smuggling statute? What if Taafe knew he was carrying marijuana but thought he was in Alaska, where that is legal, when in fact he was across the border in Canada, where it was not?

Write a one-page memo.